

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 5045 of 1999

Dated 19.10.2005

Between:

A.P.S.R.T.C., Rep. by its Regional Manager,
Srikakulam.

..... PETITIONER

AND

- 1 State Transport Appellate Tribunal, Rep. by its Presiding Officer.
Hyderabad, Andhra Pradesh and others.

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 5045 of 1999

ORAL ORDER:

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The A.P. State Road Transport Corporation represented by its Regional Manager, Srikakulam invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India challenging the order dated 21.4.1998 passed by the Appellate Transport Tribunal, Hyderabad.

The Tribunal, by the impugned order, having allowed the appeal preferred by the 3rd respondent herein directed the Secretary, R.T.A to issue stage carriage permit as town service to the 3rd respondent as prayed for “subject to permission of

Transport Commissioner under Rule 258 (2) (ii) of the A.P.Motor Vehicles Rules, 1989 (for short 'the Rules') within four months from the date of the order.

The 3rd respondent herein applied to the Regional Transport Authority, Srikakulam seeking grant of a pucca stage carriage permit on the town service route Srikakulam Lakshmi talkies to Koyyam via Thotapalem road junction, Thotapalem, Ponnada, Kommaravaripeta, Dharmavaram, D.Machilisam Road Junction, Koyyam road junction. The Regional Transport Authority vide its order dated 10.2.1997 rejected the application of the 3rd respondent on the ground that it is prohibited by the scheme in G.O.Ms.No.573, Transport, Roads & Buildings (Transport VI) dated 8.8.1979 and also hit by the provisions of the Motor Vehicles Act, 1988 (for short 'the Act'.]

On appeal preferred by the 3rd respondent, the 1st respondent by the impugned order dated 21.4.1998, having set aside the order of the Regional Transport Authority dated 10.2.1997, directed issue of permit to the 3rd respondent subject to the permission of the Transport Commissioner.

The case set up by the Corporation is that the Regional Transport Authority, Srikakulam, which is the competent authority, has not so far determined the route in question as a town service route and in such view of the matter, granting permission considering the route as town service route is totally illegal and without jurisdiction. That apart, the length of the route in question, according to the Corporation is 22.3. k.m of which only 0.9 kms lies within the municipal limits and the remaining 21.4. kms lies beyond the municipal limits. It is the further case of the Corporation that since the major portion of the route lies beyond the municipal limits, it cannot be said to be a town service route as held by this Court in ***G.V.R.RAO Vs. A.P.S.R.T.C, MUSHEERABAD***. That apart, the route in question, according to the Corporation, overlaps the notified route Srikakulam-Dharmavaram approved in G.O.Ms.No.573 dated 8.8.1979 almost for a distance of 12.2. k.ms from Lakshmi Talkies to Dharmavaram.

It is no doubt true that the scheme referred to hereinabove exempts the holders of stage carriage permits in respect of town services complying with the provisions of Rule 282(2) of the A.P.Motor Vehicle Rules, 1964 corresponding to Rule 258 (2) (ii) of the A.P.Motor Vehicle Rules 1989 and when read with Note-3, the overlapping on the notified route shall not extend beyond 8 k.ms from the municipal limits, and if it extends beyond 8 k.ms, the route ceases to be a town service route and hence becomes a mofussil service route.

None of these facts are really in dispute. Be that as it may, it is totally unnecessary to further dilate on the factual aspect of the matter since the Supreme Court in ***APSRTC VS. STATE TRANSPORT APPELLATE TRIBUNAL*** took the view that Rule 258(2) of the Rules has to be construed in the light of Sections 98 to 100 and 104 of the Motor Vehicles Act, 1988. It was observed “for the purpose of Rule 258(2), if there is a scheme in force with reference to the route concerned, the authority has to adhere to the terms of the scheme. If there is an absolute bar in the scheme against the grant of any permit for the notified route or any portion of the route, nothing further could be done”. It was further held that “ if the scheme provides an exception to the holder of stage carriage permit in respect of town service, any applicant for permit claiming benefit thereof has to necessarily satisfy the Regional Transport Authority that the route for which the permit is sought is a town service route. In order to establish the same, the applicant for permit has to approach the Transport Commissioner in the first instance if the route for which the permit is sought extends more than 8 kms beyond the limits of Municipality or town from which it starts. (emphasis is of mine). In such cases, it is only when the Transport Commissioner grants specific permission for extension of the route more than 8 kms beyond the limits of the municipality or town, the Regional Transport Authority can consider the application for grant of permit and proceed to pass orders. It is only on the basis of the Transport Commissioner’s permission the Regional Transport Authority can determine the town-service routes.”

The Apex Court in categorical terms held that “the permission of the Transport Commissioner contemplated in Rule 258(2) of the Rules has to be obtained before the application for permission is filed for a route covered by a scheme notified under the Act”.

In view of the authoritative pronouncement of the Supreme Court, the order of the Tribunal directing the Regional Transport Authority to issue stage carriage permit as town service to the 3rd respondent herein subject to the permission of the Transport Commissioner under Rule 258(2) (ii) of the Rules cannot be sustained.

Sri V.Narasimha Reddy, learned counsel for the respondent however made an attempt to contend that as on the date when the Tribunal passed the impugned order, the judgment of the Supreme Court had no application and therefore the order cannot be set aside based on the judgment of the Apex Court. The submission, in my considered opinion, is totally untenable. The order of the Tribunal is challenged in this writ petition and the very proceedings directing the grant of permission did not attain any finality. Therefore, there is no option except to apply the law declared by the Supreme Court and set aside the impugned order.

The impugned order is accordingly set aside. The writ petition is allowed without any order as to costs.

B.SUDERSHAN REDDY,J

Dated 19.10.2005

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